

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

WILLIAM J. VANDERSTEEN,

Plaintiff,
v.

Case No. 07-C-7

KURT MILLER, TAMMY RETZER,
and DON FRENS,

Defendants.

ORDER

Plaintiff William J. VanDerSteen, a Wisconsin state prisoner, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. On April 19, 2007, the plaintiff was granted leave to proceed *in forma pauperis* on a claim that the defendants failed to protect him from an attack by another prisoner in violation of the Eighth Amendment to the United States Constitution. The defendants filed an answer on June 21, 2007. On August 17, 2007, the plaintiff filed a letter stating that he voluntarily dismisses this lawsuit.

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the matter arises under federal statutes. Venue is proper under 28 U.S.C. § 1391. The case was assigned according to the random assignment of civil cases pursuant to 28 U.S.C. § 636(b)(1)(B) and General Local Rule 72.1 (E.D. Wis.). The parties have consented to United States magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c) and General Local Rule 73.1 (E.D. Wis.).

The Federal Rules of Civil Procedure provide:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Fed. R. Civ. P. 41(a). “The plain language of Rule 41(a)(1) limits voluntary dismissals to documents filed before service of an answer or motion for summary judgment, or to stipulations of dismissal signed by all parties.” *Murray v. Conseco*, 467 F.3d 602, 605 (7th Cir. 2006).

The plaintiff may not voluntarily dismiss this lawsuit without an order of the court because the defendants have already filed an answer, having done so on June 21, 2007. The action may be dismissed, however, upon stipulation of the parties, pursuant to Rule 41(b). Under these circumstances, the defendants will be ordered to inform the court on or before September 5, 2007, whether they stipulate to the dismissal of this action.

ORDER

IT IS THEREFORE ORDERED that the defendants shall inform the court on or before **September 5, 2007**, whether they stipulate to the dismissal of this action.

Dated at Milwaukee, Wisconsin, this 21st day of August, 2007.

BY THE COURT:

/s/ William E. Callahan, Jr
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge